IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4249 OF 2005

M/s. Apte Amalgamations Ltd.
& Ors. ...Applicants

Versus

Citichem India Ltd. & Anr ...Respondents

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Mr. Prakash Naik, Advocate for Applicants.

Ms. S.V. Gajare, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 14TH JULY, 2005

P. C.:-

1. Heard the learned advocate for the applicants and the learned A.P.P. for the State.

2. The applicants have prayed for quashing of process issued against them in Criminal Case No. 792/SS/2005 which is pending in the Court of learned Small Cases Judge & Special Metropolitan Magistrate, Small Causes Court, Mumbai. In the said case, process has been issued against the applicants under Section 138 of Negotiable Instruments Act. The applicants had preferred an application before the learned Magistrate for recalling of process, however, the said application is still pending and it has not

been decided. Now in view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal & Ors. reported in 2004 (4) Mh.L.J. 274**, it is settled that the Magistrate has no power to recall the process, hence, the applicants have approached this Court.

3. For the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, the applicants have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the applicants prefer revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the applicants to prefer revision before the concerned Sessions Court. The learned advocate for the applicants states that the necessary revision would be preferred within a period of three weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of three weeks from today.

5. It is also prayed that by order dated 10.6.2005, the learned Magistrate has issued non bailable

warrant against the applicants and the said N.B.W. be quashed. I am not inclined to quash the N.B.W. as in my view, it would be appropriate that the applicants prefer an application before the Magistrate for setting aside the said N.B.W. In order to enable the applicants to take necessary steps for setting aside the N.B.W. before the Magistrate, the said N.B.W. are stayed for a period of five weeks from today.

6. On the necessary revision being preferred by the applicants before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

7. Office to issue an authenticated copy of this order to the parties.

8. Application is disposed of.

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